IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04..9..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.24968 of 2006
and
M.P.No. 1 of 2006

R.Saravanan .. Petitioner

vs.

The District Elementary Educational Officer
O/o.District Elementary Educational Office,
Salem-7 .. Respondent

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari to call for the records relating to Na.Ka.No.3865/A3/2006 dated 31.7.2006 on the file of the respondent and quash the same.

For Petitioner : Mr.S.Doraisamy
For Respondent : Mr.P.Gopiraja, GA

O R D E R

I have heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.P.Gopiraja, learned Government Advocate taking notice for the respondent and have perused the records.

2. This writ petition is filed by the petitioner against the order of the respondent dated 31.7.2006 wherein and by which the petitioner's services were terminated.

3. The petitioner was appointed as a Junior Secondary Grade Teacher on 07.10.2004 on a consolidated salary of Rs.3000/- per month and an agreement was entered into under Rule 11 of the General Rules of the Tamil Nadu State and Subordinate Service Rules (for short, 'Rules']. As per the said Agreement, the petitioner was to be in the post for a period of five years on contract basis and he cannot claim any regularisation in the post of Junior Secondary Grade Teacher post. It was also stated in paragraph 6 of the said agreement signed by the petitioner, as follows:

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"The services of Thiru R.Saravanan may at any time during the tenure of service under this agreement be terminated either by the Director of Elementary Education / District Elementary Educational Officer or any higher authority by giving three months notice on the part of the teacher / employer except in case of termination for want of vacancy."

4. However, by G.O.Ms. No.99 Education Department dated 27.6.2006, the teachers were paid scale of pay instead of consolidated pay given to them. It was stated in paragraph 3 of the said order that the teachers, who are working from the academic year 2003 – 04 on consolidated pay shall be paid the scale of pay with effect from 01.6.2006. Therefore, according to the petitioner, he is eligible to have the benefit of scale of pay in the earlier term of contract as prescribed in the original Agreement, which does not exist any more. In the meanwhile, the petitioner got involved in a criminal case and a First Information Report was registered against him on 29.6.2006 on the basis of the criminal complaint given by one Kavitha, who is also serving as a Graduate teacher in the same Veeranur Panchayat Union Middle School. The grievance of the said teacher Kavitha was that the petitioner was pestering her to get married to him and when she refused, she was forcibly taken to the house of the petitioner and the petitioner and his father threatened her to get married to him failing which her family will be burnt alive. The FIR was registered in Crime No.177 of 2006 on the file of the Kolathur Police Station for the offences under Sections 341, 366 and 506 (ii) IPC. The petitioner and his father were arrested and remanded to judicial custody on 29.6.2006 and subsequently, were released by the Sessions Court, Salem, on 05.7.2006 on conditional bail. When this matter was informed to the respondent, the respondent issued a memo to dated 14.7.2006 to the petitioner basing upon the letter received from the Inspector of Police. The petitioner sent a reply denying the charges. It was also stated that the said Kavitha had withdrawn the complaint and also informed the Sessions Judge that the complaint was completely baseless. Notwithstanding the said fact, the respondent by an order dated 31.7.2006 considered the explanation and holding that the charges, which are so serious, have been proved, terminated the services of the petitioner with effect from 31.7.2006.

5. Mr.S.Doraisamy, learned counsel appearing for the petitioner contended that insofar as the petitioner was eligible to be brought under regular scale of pay, he should be considered as a person holding regular post and the question of invoking the agreement does not arise. In any event, he has stated that the petitioner, being a Government servant, is entitled to have a protection under Article 311(2) of the Constitution of India and that he cannot be dismissed for a misconduct without due enquiry. If clause 6 of the agreement is relied upon, inasmuch as the petitioner was not given any notice or pay in in lieu of notice, he has come invoking Article 302 of the Constitution of India.

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6. Per contra, the learned Government Advocate contended that the petitioner's termination was based on his criminal activities. Therefore, being a temporarily appointed consolidated pay candidate, and that too, on contract basis, he cannot be regarded as regular employment. Further, Rule 11(2) of the Rules was also relied upon to drive home the point that the agreement entered into in terms of Rule 11 (1) cannot be regarded as a member of service in which post, the said candidate is appointed. But, however, with reference to the alleged incident, in paragraph 4 of the counter affidafit, it is stated as follows:

> ".... The respondent submits that the petitioner was released on 05.7.2006, after a compromise ended between parties."

In paragraph 8, it is stated as follows:

> "The respondent submits that hearing both sides, the Court of Sessions Judge Salem ordered "The petitioner was remanded to judicial custody on 29.6.2006 for the alleged offences u/Sec. 341, 366 and 506 (ii) IPC. The defacto complainant present and has filed an affidavit. In the affidavit she has stated that out of anxiety and in a surmise she has given the complaint against the first accused who is her co-worker in the school and they have arrived at a compromise."

7. Even assuming that the petitioner was not a regular Government servant and inasmuch as paragraph 6 of the Agreement was not invoked in the present case that the termination was based upon specific allegation of misconduct, the respondent ought to have conducted the enquiry by observing minimum principles of natural justice. As to what amounts to minimum principles of natural justice came to be considered by the Supreme Court in its decision reported in AIR 1963 SC 1719 [Meenglas Tea Estate v. The Workmen] and the following passage found in paragraph 4 of the judgment reads as follows:

Para 4: "The Tribunal held that the enquiry was vitiated because it was not held accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in

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> support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, made by Mr Marshall or Mr Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it."

8. In the present case, the defence of the petitioner was not taken into account especially, when he has stated that the original complainant had withdrawn the complaint. When the original agreement itself was for a period of five years and the petitioner has only served for two years, the respondent ought to have conducted enquiry before passing the impugned order of dismissal. Even the terms of so-called contract has now came to be modified by the Government by G.O. Ms. No.99 dated 27.6.2006 which enables the petitioner to have a time scale of pay. Therefore, the question of sending him out on a finding recorded ipsi dixi by the respondent does not arise.

9. In view of the above, the writ petition shall stand allowed and the impugned order dated 31.7.2006 stands quashed. The petitioner is entitled for reinstatement and to get all consequential benefits. No costs. Connected Miscellaneous Petition is closed.

gri

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The District Elementary Educational Officer
O/o.District Elementary Educational Office,
Salem-7

+1 cc to Mr.S.Doraisamy, Advocate Sr.No.55210.

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